

Hon. Mary Jo Heston
Chapter 12
Hearing: May 24, 2018, 9:00 a.m.
Tacoma
Response due: May 17, 2018

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

SOUTHBANK DAIRIES, LLC and
JERRY D. FOSTER,

Debtors.

Bankruptcy Case No.:

17-41467 LEAD CASE

17-41468 Jointly Administered Under
17-41467

TRUSTEE'S MOTION TO APPROVE SALE
OF REAL PROPERTY FREE AND CLEAR
OF LIENS

(557 Antrim Road, Winlock, WA)

The Chapter 12 Trustee, Virginia A. Burdette, through her undersigned counsel in these jointly administered cases, moves this Court for the entry of an order as follows:

1. Approving the sale of real property owned by the Debtor Jerry D. Foster and located in Lewis County, Washington, located at 557 Antrim Road, Winlock, Washington, and legally described per the Exhibit A to the Purchase and Sale Agreement (the "Property"), for the gross sales price of \$290,000 (with an allowed reduction of \$2,500 for anticipated floor repairs), with the sale pursuant to 11 USC § 363 and other applicable law, and with the payment of normal and customary costs of sale, including a real estate commission of 5.0%; and

TRUSTEE'S MOTION - Page 1 of 3

WENOKUR RIORDAN PLLC
ATTORNEYS AT LAW
600 STEWART STREET, SUITE 1300
SEATTLE, WASHINGTON 98101
206.682.6224 (WENOKUR)
206.903.0401 (RIORDAN)

1 2. Approving disbursements from the gross proceeds of sale for costs of sale, commissions, any
2 accrued and unpaid real property taxes, Trustee compensation, and payment of secured claims, all as
3 described below, with remaining net proceeds to be held by the Trustee and then distributed in
4 accordance with the confirmed Chapter 12 plan.

5 **1. Nature of the Property.** The Property consists of residential real property in Winlock,
6 Washington.

7 **2. Purchase Offer and Terms.** The Trustee listed the Property with her realtors Randy Sullivan
8 and Greg Lund at Century 21 Lund, Realtors on April 11, 2018, with a listing price of \$295,000. On
9 April 15, 2018, the Trustee received an offer from Stephen Valentine and Jessica Valentine (“Buyers”).
10 Following counteroffer, the parties have agreed on a gross sales price of \$290,000, with a reduction of
11 \$2,500 allowed for flooring repairs. The Trustee received two other written offers. The Trustee
12 concluded that the Valentine offer was the highest and best offer received for the Property.

13 The Buyers have no known affiliation with the Debtor, and are believed to be independent,
14 bona fide purchasers for value. A copy of the fully executed Residential Real Estate Purchase and Sale
15 Agreement with all addenda is attached to the Declaration of Virginia Burdette filed in support of this
16 Motion. The listing agreement provides for total broker’s fees of 5.0%, to be split between the real
17 estate agents and their respective offices.

18 **3. Net Proceeds.** The Trustee proposes to sell the Property free and clear of all liens and
19 encumbrances, with any liens and encumbrances attaching to the proceeds of sale.

20 Notwithstanding the free-and-clear-sale language, the Trustee proposes to make the following
21 distributions out of escrow from the adjusted gross price of sale: (a) normal and typical costs of closing;
22 (b) real estate broker commission of 5.0%; (c) reimbursement of costs advanced by the Trustee’s agents
23 in connection with sale, for septic pumping, mowing, and cleanup, in the estimated amount of \$2,500;

1 (d) Trustee compensation in the amount of \$8,625 (that is, 3% of \$287,500); (e) payment of any
2 accrued and unpaid real property taxes; (f) approximate balance of \$18,311 on the first-position
3 secured claim of Bank of America (Plan Class 8); (g) approximate balance of \$58,227 on the second-
4 position secured claim of Key Bank (Plan Class 9); and (h) remaining net proceeds in accordance with
5 the confirmed Chapter 12 plan.

6 **4. Waiver.** The Trustee requests a waiver of the 14-day stay of Rule 6004(h). The contract
7 provides for a closing by May 25, 2018.

8 **5. Analysis Regarding Sales Price.** The offer was obtained after the Property was listed on the
9 open market. Three offers were received, with Buyers' offer being the highest and best. The Buyers'
10 offer is believed to be a good, fair value offer for the Property. Further sales efforts would not likely
11 materially improve the benefit for the bankruptcy estate.

12 **6. Conclusion.**

13 Based on the foregoing, the Trustee therefore requests that the Court approve the sale of the
14 Property and related disbursements consistent with the terms and conditions of this Motion and the
15 purchase and sale agreement. A proposed order is attached.

16 DATED April 27, 2018.

17 WENOKUR RIORDAN PLLC

18 */s/ Alan J. Wenokur*

19 Alan J. Wenokur, WSBA # 43058

20 Attorney for Trustee